

HOUSE BILL No. 1664

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-2-61.8; IC 14-25-2; IC 14-26-2-9; IC 14-27-7.5-10; IC 14-28-1.

Synopsis: Natural resources. Requires the department of natural resources to negotiate the wholesale rate of reservoir water. Authorizes the utility regulatory commission to set wholesale water rates between the department and a purchaser. Allows the water resources development fund to be used for the operation of the division of water. Establishes new and increased fees the department must charge for the following: (1) a permit to alter a lake shoreline or bed; (2) a technical inspection of a low hazard or significant hazard dam; and (3) a permit to reconstruct a home in or to make other uses of a floodway. (The introduced version of this bill was prepared by the natural resources study committee.)

Effective: July 1, 2003.

Reske, Mangus, Saunders

January 21, 2003, read first time and referred to Committee on Agriculture, Natural Resources and Rural Development.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1664

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2-61.8 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]: **Sec. 61.8. (a) If the commission receives a petition under**
4 **IC 14-25-2-3, the commission shall set the rate of compensation to**
5 **the state under procedures established by the commission.**

6 **(b) The rate established under subsection (a) must be on a unit**
7 **pricing basis and comparable with other rates for the wholesale**
8 **purchase of water in Indiana.**

9 SECTION 2. IC 14-25-2-3 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. A contract for the
11 sale of water on a unit pricing basis that is entered into under this
12 chapter or under IC 13-2-1-7 (before its repeal) after June 30, ~~1991,~~
13 **2003**, must provide for compensation to the state at ~~the~~ **a rate of**
14 ~~thirty-three dollars (\$33) per one million (1,000,000) gallons of water~~
15 **determined by agreement between the department and the**
16 **purchaser or contracting party. However, either party may**
17 **petition the Indiana utility regulatory commission under**



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IC 8-1-2-61.8 to set the rate.

SECTION 3. IC 14-25-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) As used in this section, "fund" refers to the water resources development fund created by this section.

(b) The water resources development fund is created. Money paid to the state under a contract entered into under this chapter shall be deposited in the fund.

(c) The proceeds of the fund do not revert to the state general fund but constitute a revolving fund to be used exclusively for the purposes of this chapter.

(d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from the investments shall be deposited in the fund.

(e) The budget agency shall make fund allotments from the fund to the commission for any of the following purposes:

- (1) The development of new reservoirs.
- (2) The investigation, development, and improvement of existing reservoirs.
- (3) The acquisition of easements or purchase in fee simple of land and property to be used as reservoir sites.
- (4) The financing, construction, operation, and maintenance of reservoir impoundments or parts of impoundments for water supply storage and uses, either independently or in cooperation with any person.
- (5) The investigation of water resource availability, quality, and water supply needs.
- (6) Watershed protection.
- (7) River enhancement.
- (8) The preparation of a compilation and mapping of all community public water supplies under IC 14-25-7-13(d).

(9) The operation of the division of water.

(f) The commission shall administer the fund.

SECTION 4. IC 14-26-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) Upon written application by the owner of land abutting a public freshwater lake and payment of a nonrefundable fee of ~~twenty-five~~ **one hundred** dollars ~~(\$25)~~, **(\$100)**, the department may issue a permit to:

- (1) change the shoreline; or
- (2) alter the bed;

of a public freshwater lake after investigating the merits of the

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application.

(b) As a condition precedent to granting a permit, an applicant must, in writing, do the following:

(1) Acknowledge that all additional water area created is a part of the lake.

(2) Dedicate the additional area to the general public use.

SECTION 5. IC 14-27-7.5-10, AS ADDED BY P.L.148-2002, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) The department shall make a technical inspection of:

(1) a significant hazard structure at least one (1) time every three (3) years; and

(2) a low hazard structure at least one (1) time every five (5) years;

or at more frequent intervals if the exigencies of the case require.

(b) The department shall place in the files of the department a report of each inspection conducted under subsection (a).

(c) The department shall charge the following for engineering inspections:

(1) For a significant hazard structure under subsection (a)(1), a fee of two hundred dollars (\$200).

(2) For a low hazard structure under subsection (a)(2), a fee of one hundred dollars (\$100).

SECTION 6. IC 14-28-1-22, AS AMENDED BY P.L.154-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 22. (a) As used in subsection (b)(1) with respect to a stream, "total length" means the length of the stream, expressed in miles, from the confluence of the stream with the receiving stream to the upstream or headward extremity of the stream, as indicated by the solid or dashed, blue or purple line depicting the stream on the most current edition of the seven and one-half (7 1/2) minute topographic quadrangle map published by the United States Geological Survey, measured along the meanders of the stream as depicted on the map.

(b) This section does not apply to the following:

(1) A reconstruction or maintenance project (as defined in IC 36-9-27) on a stream or an open regulated drain if the total length of the stream or open drain is not more than ten (10) miles.

(2) A construction or reconstruction project on a state or county highway bridge in a rural area that crosses a stream having an upstream drainage area of not more than fifty (50) square miles and the relocation of utility lines associated with the construction or reconstruction project if confined to an area not more than one

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hundred (100) feet from the limits of the highway construction right-of-way.

(3) The performance of an activity described in subsection (c)(1) or (c)(2) by a surface coal mining operation that is operated under a permit issued under IC 14-34.

(4) Any other activity that is determined by the commission, according to rules adopted under IC 4-22-2, to pose not more than a minimal threat to floodway areas.

(5) An activity in a boundary river floodway to which section 26.5 of this chapter applies.

(c) A person who desires to:

(1) erect, make, use, or maintain a structure, an obstruction, a deposit, or an excavation; or

(2) suffer or permit a structure, an obstruction, a deposit, or an excavation to be erected, made, used, or maintained;

in or on a floodway must file with the director a verified written application for a permit accompanied by a nonrefundable fee of ~~fifty two hundred~~ dollars ~~(\$50): (\$200)~~.

(d) The application for a permit must set forth the material facts together with plans and specifications for the structure, obstruction, deposit, or excavation.

(e) An applicant must receive a permit from the director for the work before beginning construction. The director shall issue a permit only if in the opinion of the director the applicant has clearly proven that the structure, obstruction, deposit, or excavation will not do any of the following:

(1) Adversely affect the efficiency of or unduly restrict the capacity of the floodway.

(2) Constitute an unreasonable hazard to the safety of life or property.

(3) Result in unreasonably detrimental effects upon fish, wildlife, or botanical resources.

(f) In deciding whether to issue a permit under this section, the director shall consider the cumulative effects of the structure, obstruction, deposit, or excavation. The director may incorporate in and make a part of an order of authorization conditions and restrictions that the director considers necessary for the purposes of this chapter.

(g) A permit issued under this section:

(1) is void if construction is not commenced within two (2) years after the issuance of the permit; and

(2) to:

(A) the Indiana department of transportation or a county

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highway department if there is any federal funding for the project; or

(B) an electric utility for the construction of a power generating facility;

is valid for five (5) years from the date of issuance and remains valid indefinitely if construction is commenced within five (5) years after the permit is issued.

(h) The director shall send a copy of each permit issued under this section to each river basin commission organized under:

(1) IC 14-29-7 or IC 13-2-27 (before its repeal); or

(2) IC 14-30-1 or IC 36-7-6 (before its repeal);

that is affected.

(i) The permit holder shall post and maintain a permit issued under this section at the authorized site.

(j) For the purposes of this chapter, the lowest floor of a building, including a residence or abode, that is to be constructed or reconstructed in the one hundred (100) year floodplain of an area protected by a levee that is:

(1) inspected; and

(2) found to be in good or excellent condition;

by the United States Army Corps of Engineers shall not be lower than the one hundred (100) year frequency flood elevation plus one (1) foot.

SECTION 7. IC 14-28-1-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 24. (a) This section does not apply to the reconstruction of a residence located in a boundary river floodway.

(b) A person may not begin the reconstruction of an abode or a residence that:

(1) is located in a floodway; and

(2) is substantially damaged (as defined in 44 CFR 59.1, as in effect on January 1, 1993) by a means other than floodwater;

unless the person has obtained a permit under this section or section 26.5 of this chapter.

(c) A person who desires to reconstruct an abode or a residence described in subsection (b) must file with the director a verified written application for a permit accompanied by a nonrefundable fee of ~~fifty~~ **two hundred** dollars ~~(\$50)~~ **(\$200)**. An application submitted under this section must do the following:

(1) Set forth the material facts concerning the proposed reconstruction.

(2) Include the plans and specifications for the reconstruction.

(d) The director may issue a permit to an applicant under this

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section only if the applicant has clearly proven all of the following:

(1) The abode or residence will be reconstructed:

(A) in the area of the original foundation and in substantially the same configuration as the former abode or residence; or

(B) in a location that is, as determined by the director, safer than the location of the original foundation.

(2) The lowest floor elevation of the abode or residence as reconstructed, including the basement, will be at or above the one hundred (100) year flood elevation.

(3) The abode or residence will be designed or modified and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(4) The abode or residence will be reconstructed with materials resistant to flood damage.

(5) The abode or residence will be reconstructed by methods and practices that minimize flood damages.

(6) The abode or residence will be reconstructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and located to prevent water from entering or accumulating within the components during conditions of flooding.

(7) The abode or residence, as reconstructed, will comply with the minimum requirements for floodplain management set forth in 44 CFR Part 60, as in effect on January 1, 1993.

(e) When granting a permit under this section, the director may establish and incorporate into the permit certain conditions and restrictions that the director considers necessary for the purposes of this chapter.

(f) A permit issued by the director under this section is void if the reconstruction authorized by the permit is not commenced within two (2) years after the permit is issued.

(g) The director shall send a copy of each permit issued under this section to each river basin commission organized under:

(1) IC 14-29-7 or IC 13-2-27 (before its repeal); or

(2) IC 14-30-1 or IC 36-7-6 (before its repeal);

that is affected by the permit.

(h) The person to whom a permit is issued under this section shall post and maintain the permit at the site of the reconstruction authorized by the permit.

(i) A person who:

(1) begins the reconstruction of an abode or a residence in

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1 violation of subsection (b);
2 (2) violates a condition or restriction of a permit issued under this
3 section; or
4 (3) fails to post and maintain a permit at a reconstruction site in
5 violation of subsection (h);
6 commits a Class C infraction. Each day that the person is in violation
7 of subsection (b), the permit, or subsection (h) constitutes a separate
8 infraction.

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